

JP Morgan Chase Bank, N.A. v Motorola, Inc.

2005 NY Slip Op 30140(U)

August 4, 2005

sciv, New York County

Docket Number: 0108221/2005

Judge: Sheila Abdus-Salaam

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHEILA ABDUS-SALAAM
Justice

PART 13

JP Morgan Chase Bank, N.A.

INDEX NO. 108221/05

MOTION DATE 8/4/05

- v -

MOTION SEQ. NO. 001

Motorola, Inc.

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this petition for an order pursuant to CPLR 5227 for a judgment providing that in the event that Motorola shall become indebted, by judgment or otherwise, to Iridium India Telecom Limited, that Motorola shall pay to Chase an amount up to \$10, 872,9999.05 (plus interest), fees and expenses, is granted.

In this proceeding, Chase seeks to garnish funds in the possession of Motorola in an effort to satisfy a default judgment that was entered by the United States Court for the District of Delaware against Iridium India Telecom Limited in favor of Chase. The default judgment arises in connection with a Senior Secured Credit Agreement pursuant to which Chase and other lenders extended an \$800 million syndicated loan to Iridium Operating LLC, a wholly owned subsidiary of Iridium Limited. Chase has

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

been unable to enforce the judgment against Iridium, a company which apparently maintains no assets in this country.

In September 2002, Iridium filed suit against Motorola in the High Court of Judicature in Bombay, India, seeking damages in excess of \$200 million based upon alleged fraud by Motorola. In support of the petition, Chase asserts that Motorola may ultimately be found liable to Iridium and CPLR 5227 permits Chase to seek a judgment requiring Motorola to execute and deliver a document signifying its obligation to pay Chase, up to the amount of the default judgment plus interest and other expenses.

CPLR 5227 provides that a judgment creditor may commence a special proceeding against any person who it is shown is or will become indebted to the judgment debtor. A cause of action constitutes a debt as contemplated by the statute (see CPLR 5201 (a); see also Suffolk Auto Liquidators, Inc. v. Eastern Auto Auction, Inc., 74 Misc. 2d 411). The fact that the litigation commenced by Iridium against Motorola is pending in a foreign court does not render CPLR 5227 inapplicable, as CPLR 5201 (a) provides that a debt may consist of a cause of action within or without the state.

Iridium has argued in opposition to this petition that Chase cannot enforce the judgment entered by the Delaware court in a New York Court because a default judgment does not qualify as a foreign judgment pursuant to CPLR 5401. However, as is noted by Chase, it did not file the Delaware judgment with the New York County Clerk's office pursuant to CPLR 5401. Instead, it first registered the default judgment with a New York Federal Court. Once registered in the Southern District, the default judgment obtained the "same effect" as if it were a judgment rendered by a court of the Southern District (28 U.S.C. § 1963). Chase then docketed a transcript

of that registered judgment with the New York County Clerk's office. CPLR 5018 (b) provides that such a judgment shall then have the same effect as a judgment entered in the supreme court within the county. This procedure then allowed Chase to enforce the default judgment under CPLR Article 52 (see Siegel, New York Practice,, § 422 n.8 [3d ed]).

Finally, Motorola has argued that a garnishment order would subject Motorola to double liability in that because a default judgment is unenforceable under Indian Law, a garnishment order based upon that default judgment would likewise be unenforceable. Motorola has raised the concern that Iridium will not be obligated to credit Motorola for its payment to Chase of any portion of a judgment entered in favor of Iridium. While Motorola recognizes that such a credit is required under CPLR 5209, it asserts that the India court may not recognize such a credit.

In a supplemental affidavit in opposition to the petition, Motorola also informs the court that in August 2000, Oman International Bank filed a petition against Iridium India in the Bombay High Court seeking to "wind up" Iridium India because it is unable to pay its debts. The High Court issued an order directing Iridium not to create any further encumbrances on its assets. Additionally, Motorola has cited India's Companies Act of 1956, which provides, in pertinent part, that in the case of a winding up by or subject to the supervision of the court, any disposition of the property (including actionable claims) shall be void unless the court directs otherwise. Thus, argues Motorola, any agreement between Iridium and Motorola providing for payment directly to Chase, as has been suggested by Chase, may be deemed void by the India court pursuant to the Companies Act of 1956.

Based upon the foregoing, the petition is granted as follows:

In conjunction with the granting of this petition, Iridium is directed to execute and deliver to Motorola a writing stating that in the event that Motorola shall become obligated, by judgment or otherwise, to pay Iridium as a result of the Indian litigation, the amount of such payment shall be reduced by the amount of the default judgment, which amount Motorola will pay directly to Chase, unless said agreement is determined to be void by the India court.

Settle Judgment in accordance with the foregoing decision.

Dated: August 4, 2005

SAS

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE